

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE EXCEPTION TO THE REQUIREMENT THAT CERTAIN ENVIRONMENTAL REGULATIONS MAY NOT BE MORE STRINGENT THAN FEDERAL REGULATIONS OR GUIDELINES; AMENDING SECTIONS 75-2-207, 75-5-203, 75-5-309, 75-6-116, 75-10-107, 76-4-135, AND 80-15-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-207, MCA, is amended to read:

"75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions

-- procedure. (1) After April 14, 1995 [the effective date of this act], except as provided in subsections (2) and (3) or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board or department may incorporate by reference comparable federal regulations or guidelines.

~~(2) (a) The board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:~~

~~_____ (i) a public hearing is held;~~

~~_____ (ii) public comment is allowed; and~~

~~_____ (iii) the board or the department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:~~

~~_____ (A) protects public health or the environment;~~

~~_____ (B) can mitigate harm to the public health or the environment; and~~

~~_____ (C) is achievable with current technology.~~

~~(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.~~

~~(c) (i) (2) (a)~~ A person or entity affected by a rule of the board or department adopted after January 1,

1990, and before April 14, 1995 [the effective date of this act], that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule.

(ii)(b) If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii)(c) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed \$250.

(iv) ~~A person may also petition the board or department for a rule review under subsection (2)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.~~

(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 2. Section 75-5-203, MCA, is amended to read:

"75-5-203. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995 [the effective date of this act], except as provided in subsections (2) ~~through (5)~~ and (3) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) ~~The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:~~

~~—— (a) the proposed state standard or requirement protects public health or the environment of the state; and~~

~~—— (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.~~

~~—— (3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the~~

1 ~~hearing record regarding the costs to the regulated community that are directly attributable to the proposed state~~
2 ~~standard or requirement.~~

3 ~~(4)(2) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14,~~
4 ~~1995 [the effective date of this act], that that person believes to be more stringent than comparable federal~~
5 ~~regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more~~
6 ~~stringent than comparable federal regulations or guidelines, the board shall comply with this section by either~~
7 ~~revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided~~
8 ~~under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A~~
9 ~~petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board~~
10 ~~may charge a petition filing fee in an amount not to exceed \$250.~~

11 ~~(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts~~
12 ~~a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal~~
13 ~~government subsequently establishes comparable regulations or guidelines that are less stringent than the~~
14 ~~previously adopted board rule.~~

15 ~~(5)(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of~~
16 ~~2-4-303(1)."~~

17
18 **Section 3.** Section 75-5-309, MCA, is amended to read:

19 **"75-5-309. Standards no more stringent than federal standards.** ~~(1) In adopting rules to implement~~
20 ~~this chapter, the board may not adopt rules that are more stringent than corresponding draft or final federal~~
21 ~~regulations, guidelines, or criteria if the board makes written findings, based on sound scientific or technical~~
22 ~~evidence in the record, which state that rules that are more stringent than corresponding federal regulations,~~
23 ~~guidelines, or criteria are necessary to protect the public health, beneficial use of water, or the environment of~~
24 ~~the state.~~

25 ~~(2) The board's written findings must be accompanied by a board opinion referring to and evaluating the~~
26 ~~public health and environmental information and studies contained in the record that forms the basis for the~~
27 ~~board's conclusion."~~

28
29 **Section 4.** Section 75-6-116, MCA, is amended to read:

30 **"75-6-116. State regulations no more stringent than federal regulations or guidelines.** (1) After April

14, 1995 [the effective date of this act], except as provided in subsections (2) through (5) and (3) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

~~(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:~~

~~—— (a) the proposed state standard or requirement protects public health or the environment of the state; and~~

~~—— (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.~~

~~—— (3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.~~

~~(4) (a)(2)~~ A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995 [the effective date of this act], that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed \$250.

~~(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.~~

~~(5)(3)~~ This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

1 **Section 5.** Section 75-10-107, MCA, is amended to read:

2 **"75-10-107. State regulations no more stringent than federal regulations or guidelines.** (1) After
3 April 14, 1995 [the effective date of this act], except as provided in subsections (2) ~~through (5)~~ and (3) or unless
4 required by state law, the department may not adopt a rule to implement this chapter that is more stringent than
5 the comparable federal regulations or guidelines that address the same circumstances. The department may
6 incorporate by reference comparable federal regulations or guidelines.

7 ~~(2) The department may adopt a rule to implement this chapter that is more stringent than comparable~~
8 ~~federal regulations or guidelines only if the department makes a written finding after a public hearing and public~~
9 ~~comment and based on evidence in the record that:~~

10 ~~—— (a) the proposed state standard or requirement protects public health or the environment of the state;~~
11 ~~and~~

12 ~~—— (b) the state standard or requirement to be imposed can mitigate harm to the public health or~~
13 ~~environment and is achievable under current technology.~~

14 ~~—— (3) The written finding must reference information and peer-reviewed scientific studies contained in the~~
15 ~~record that forms the basis for the department's conclusion. The written finding must also include information from~~
16 ~~the hearing record regarding the costs to the regulated community that are directly attributable to the proposed~~
17 ~~state standard or requirement.~~

18 ~~(4) (a)~~ (2) A person affected by a rule of the department adopted after January 1, 1990, and before April
19 14, 1995 [the effective date of this act], that that person believes to be more stringent than comparable federal
20 regulations or guidelines may petition the department to review the rule. If the department determines that the
21 rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this
22 section by either revising the rule to conform to the federal regulations or guidelines ~~or by making the written~~
23 ~~finding, as provided under subsection (2),~~ within a reasonable period of time, not to exceed 12 months after
24 receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the
25 challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

26 ~~(b) A person may also petition the department for a rule review under subsection (4)(a) if the department~~
27 ~~adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the~~
28 ~~federal government subsequently establishes comparable regulations or guidelines that are less stringent than~~
29 ~~the previously adopted department rule.~~

30 ~~(5)~~ (3) This section does not apply to a rule adopted under the emergency rulemaking provisions of

1 2-4-303(1)."

2

3 **Section 6.** Section 76-4-135, MCA, is amended to read:

4 **"76-4-135. State regulations no more stringent than federal regulations or guidelines.** (1) After April
5 14, 1995 [the effective date of this act], except as provided in subsections (2) ~~through (5)~~ and (3) or unless
6 required by state law, the department may not adopt a rule to implement this chapter that is more stringent than
7 the comparable federal regulations or guidelines that address the same circumstances. The department may
8 incorporate by reference comparable federal regulations or guidelines.

9 ~~(2) The department may adopt a rule to implement this chapter that is more stringent than comparable~~
10 ~~federal regulations or guidelines only if the department makes a written finding after a public hearing and public~~
11 ~~comment and based on evidence in the record that:~~

12 ~~—— (a) the proposed state standard or requirement protects public health or the environment of the state;~~
13 ~~and~~

14 ~~—— (b) the state standard or requirement to be imposed can mitigate harm to the public health or~~
15 ~~environment and is achievable under current technology.~~

16 ~~—— (3) The written finding must reference information and peer-reviewed scientific studies contained in the~~
17 ~~record that forms the basis for the department's conclusion. The written finding must also include information from~~
18 ~~the hearing record regarding the costs to the regulated community that are directly attributable to the proposed~~
19 ~~state standard or requirement.~~

20 ~~(4) (a)(2)~~ A person affected by a rule of the department adopted after January 1, 1990, and before April
21 14, 1995 [the effective date of this act], that that person believes to be more stringent than comparable federal
22 regulations or guidelines may petition the department to review the rule. If the department determines that the
23 rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this
24 section by either revising the rule to conform to the federal regulations or guidelines or by making the written
25 finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after
26 receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the
27 challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

28 ~~(b) A person may also petition the department for a rule review under subsection (4)(a) if the department~~
29 ~~adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the~~
30 ~~federal government subsequently establishes comparable regulations or guidelines that are less stringent than~~

1 ~~the previously adopted department rule.~~

2 ~~(5)(3)~~ This section does not apply to a rule adopted under the emergency rulemaking provisions of
3 2-4-303(1)."

4
5 **Section 7.** Section 80-15-110, MCA, is amended to read:

6 **"80-15-110. State regulations no more stringent than federal regulations or guidelines.** (1) After
7 ~~April 14, 1995~~ [the effective date of this act], except as provided in subsections (2) ~~through (5)~~ and (3) or unless
8 required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the
9 comparable federal regulations or guidelines that address the same circumstances. The board may incorporate
10 by reference comparable federal regulations or guidelines.

11 ~~(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal~~
12 ~~regulations or guidelines only if the board makes a written finding after a public hearing and public comment and~~
13 ~~based on evidence in the record that:~~

14 ~~—— (a) the proposed state standard or requirement protects public health or the environment of the state;~~
15 ~~and~~

16 ~~—— (b) the state standard or requirement to be imposed can mitigate harm to the public health or~~
17 ~~environment and is achievable under current technology.~~

18 ~~—— (3) The written finding must reference information and peer-reviewed scientific studies contained in the~~
19 ~~record that forms the basis for the board's conclusion. The written finding must also include information from the~~
20 ~~hearing record regarding the costs to the regulated community that are directly attributable to the proposed state~~
21 ~~standard or requirement.~~

22 ~~(4) (a)(2)~~ A person affected by a rule of the board adopted after January 1, 1990, and before ~~April 14,~~
23 ~~1995~~ [the effective date of this act], that that person believes to be more stringent than comparable federal
24 regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more
25 stringent than comparable federal regulations or guidelines, the board shall comply with this section by either
26 revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided
27 under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A
28 petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board
29 may charge a petition filing fee in an amount not to exceed \$250.

30 ~~(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts~~

~~a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.~~

~~(5)(3)~~ This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -